No. 84-938

Office - Supreme Court, U.S.
FILED
DEC 12 1984
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

ROBERT A. BUSS,

Petitioner,

vs.

WESTERN AIRLINES, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

JOAN CELIA LAVINE
Attorney at Law
123 North Hobart Boulevard
Los Angeles, California 90004
(213) 627-3241

Attorney for Petitioner
Robert A. Buss

Vol. II of III

INDEX TO APPENDIX

		Page
App. A	ORDER OF THE CHIEF JUDGE - 1/31/78	1
App. B	SPECIAL ORDER OF U.S. MAGISTRATE DISCOVERY PROCEEDING ASSIGNMENT - 7/24/78	5
App. C	U.S. COURT OF APPEALS ORDER - 10/13/78	7
App. D	LOCAL RULE 3(1) STIPULATION OF COUNSEL RE DISCOVERY - 8/15/79	10
App. E	ORDER RE DISCOVERY PER JUDGE WATERS - 12/20/79	20
App. F	ORDER REGARDING PRE-TRIAL PROCEEDINGS PER JUDGE HATTER - 7/1/80	22
App. G	RECEIPT FOR TAPE OF PRETRIAL MEETING ON JUNE 18, 1980 - 6/30/80	27
App. H	ORDER - 7/23/80	29
App. I	DECLARATION OF JOAN CELIA LAVINE IN SUPPORT OF MOTION FOR CONTINUANCE OF PRETRIAL CONFERENCE HEARING AND OF DATE FOR PRE-TRIAL MEM. UNDER LOCAL RULE 9(e) - 7/25/80	31

App. J	REPORTER'S TRANSCRIPT OF PROCEEDINGS - 8/4/80	41
App. K	PLAINTIFF'S STATEMENT OF PROGRESS RE PREPARATION OF PRETRIAL CONFERENCE STATEMENT AND SECOND DRAFT OF PROPOSED PRETRIAL ORDER - 8/7/80	71
App. L	REPORTER'S TRANSCRIPT OF PROCEEDINGS - 8/11/80	160
App. M	AFFIDAVIT OF PAUL L. GIANNINI - 8/11/80	174
App. N.	MINUTE ORDER - 8/11/80	178a
App. O	NOTICE OF MOTION TO SCHEDULE FURTHER DISCOVERY AND MOTION THEREON; MEM. OF POINTS AND AUTHORITIES; DEC. OF DR. RAYMOND SCHULTZ - 9/29/80	179
App. P	REPORTER'S TRANSCRIPT OF PROCEEDINGS - 9/22/80	191
App. Q	MINUTE ORDER - 9/22/80	219
App. R	ORDER OF DISMISSAL PER JUDGE HATTER - 10/3/80	221

App. S	NOTICE OF MOTION AND MOTION TO RECONSIDER ORDER DISMISSING ACTION WITHOUT PREJUDICE AND TO ALTER AND AMEND SAID ORDER PURSUANT TO F.R.CIV.P., RULES 59(e) AND 60, AND DUE PROCESS CLAUSE OF FIFTH AMENDMENT, U.S. CONSTITUTION; MEM. OF POINTS AND AUTHORITIES; EXHIBITS - 10/20/80	226
App. T	MINUTE ORDER - 10/20/80	316
App. U	ORDER - 7/24/84	318
App. V	U. S. COURT OF APPEALS FOR NINTH CIRCIUT ORDER - 7/26/84	319
App. W	ORDER DENYING REHEARING - 9/13/84	324
App. X	ARTICLE III OF THE U. S. CONSTITUTION	325
App. Y	FIFTH AMENDMENT, U.S. CONSTITUTION	326
App. Z	SEVENTH AMENDMENT, U.S. CONSTITUTION	327
App. AA	FED. RULES OF CIVIL PROC., RULE 16	328
App. BB	FED. RULES OF CIVIL PROC., RULE 41(b)	330

App. CC	FED. RULES OF CIVIL PROC., RULE 83	331
App. DD	U.S. DIST. COURT FOR CENTRAL DIST. OF CALIF., LOCAL CIV. RULE 9	332
App. EE	U.S. DIST. COURT FOR CENTRAL DIST. OF CALIF., LOCAL CIV. RULE 9	333
App. FF	U. S. DIST. COURT FOR CENTRAL DIST. OF CALIF., CURRENT LOCAL RULE 27.2	334

APPENDIX J

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE TERRY J. HATTER, JR.
JUDGE PRESIDING

ROBERT A. BUSS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CV 77-124-TJH
	)	
WESTERN AIRLINES,	)	
	)	
Defendant.	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Place: Los Angeles, California

Date: Monday, August 4, 1980

PATRICIA FERRIER
Official Reporter
410 U.S. Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 628-8423

APPEARANCES:

For the Plaintiff:

JOAN CELIA LAVINE
Attorney at Law
Suite 410
304 South Broadway
Los Angeles, California 90069

MORRIS LAVINE
Attorney at Law
Suite 410
304 South Broadway
Los Angeles, California 90069

For the Defendant:

Darling, Hall, Rae & Gute
By: PAUL L. GIANNINI
Attorney at Law
Suite 400
523 West Sixth Street
Los Angeles, California 90014

INDEX

	Page
Plaintiff's Motion Amend Complaint To Increase Damages Allegations Denied	12
Plaintiff's Motion to Continue Pre-Trial Conference Denied	12
Plaintiff's Request for Stenographic Coverage of Meetings between Counsel Denied	19
Plaintiff's Counsel's Request to Correct Minutes Granted	19

LOS ANGELES, CALIFORNIA, MONDAY, AUGUST 4, 1980, 10:15 A.M.

-o-

THE CLERK: Item number ten, civil action CV 77-124, Robert Buss versus Western Airlines.

Counsel, please make your appearances.

MS. LAVINE: Good morning, your Honor. Joan Celia Lavine appearing for the Plaintiff, Robert A. Buss.

THE COURT: Thank you, Ms. Lavine.

MR. GIANNINI: Good morning, your Honor.

MS. LAVINE: Excuse me. And my father, Morris Lavine, is also appearing. He is also appearing on my behalf personally, and also on behalf of Robert Buss. Mr. Buss; is that correct?

MR. BUSS: That is right.

MR. GIANNINI: Good morning, your Honor. Paul Giannini for defendant Western Airlines.

THE COURT: Thank you, Mr. Giannini.

Go ahead, Ms. Lavine.

MS. LAVINE: Thank you, your Honor. I have two matters before you this morning.

THE COURT: Yes.

MR. LAVINE: The first is what I had thought was really a rather perfunctory kind of motion to amend the complaint to increase, basically, the damages allegations.

As your Honor, I am sure, is fully aware, even if I had not amended and had simply gone to trial Rule 54(c) of the Federal Rules of Civil Procedure provides as follows:

> "Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."

The kind of lawsuit that this is, an age discrimination suit, is the kind of lawsuit which I brought when the law was really a baby and still in its infancy and developing. And there is a lot of litigation going on about what kind of damages can be obtained.

We did discovery in this case, and it turned out that Mr. Buss' damages were substantially greater than what we had originally realized. As a matter of fact, I might comment to you at one time we probably would have settled this case for $60,000.00. But after we did discovery we knew this case was worth far more than that.

My opposition had asked me at one of our meetings about the kind of damages, and I told him that I would let him know what kind of damages we are seeking. And I have chosen this means of giving him as

full notice as is possible.

I would like to point out to you that we are handicapped by still not having received full information about the successors' pay, including his fringe benefits. My opposition complains that, for instance, we seek liquidated damages.

I invoked the jurisdiction of this Court under Title 29, Section U.S.C., Section 626 in the first amended complaint that was filed in 1977.

That provides for liquidated damages, and it provides for all of the damages, I believe, that we are seeking. There is a lot of litigation going on still about what kind of damages are available, and probably up to the time of trial we will still be in limbo as to that kind of a problem.

However, I do wish to give my opposition notice now. I could have waited

until after the case had been tried and simply have amended the complaint, but I chose to do the notice-giving in this manner, because I feel it is the most appropriate.

Do you have any questions to ask me, and do you disagree with me?

THE COURT: I want to hear from Mr. Giannini. I would ask you why it has taken so much time for you to determine that you need to file the seconded amended complaint, however.

MS. LAVINE: Your Honor, for over two years we have been trying to get damages discovered. You will note that I still have pending in the Ninth Circuit a writ to obtain the complete information about successors' income.

We indicated in a deposition of Mr. Buss about a year ago, a little over

that, fifteen months ago, that we needed Mr. Morrison's payroll records in order to be able to completely compute those damages. We cannot. We still cannot do that, except by projecting on a theory basis from what partial information we have. That is the problem.

We have had a bitter knock-down dragged-out battle. I am sure you have been receiving my copies of briefs as we have gone on, and over and over and over again I have asked for these records.

Mr. Buss in his deposition fifteen months ago notified the defendant that he needed Mr. Morrison's payroll records in order to compute the damages properly.

In the Ninth Circuit I filed this last week a declaration of our economist, Mr. Raymond Schultz, that this information is essential.

Your Honor, we have been litigating this for two years. Now, I respectfully submit that the magistrate originally ordered that this information be supplied to us, but that it has not been. And I would direct your Honor's attention to an order of the magistrate dated August 17, 1978 in which he ordered that the salary and benefits of successors of Mr. Buss and his position be provided to Mr. Buss.

The only thing that was supplied to us was an accounting sheet with partial information. You may recall that accounting sheet listed gross salary and per diem, and it went through part of 1978. It does not go beyond that.

And for that reason we are still in a position where the defendant has not given us the discovery that we need to have completed the alteration of the

complaint. However, again, I say to your Honor, even if I had not sought to amend the complaint for this reason I believe that you would be duty bound to have awarded the damages under Federal Rules of Civil Procedure 54(c).

Do you agree with me?

THE COURT: As I say, I want to hear from Mr. Giannini before I express any opinion.

MS. LAVINE: By the way, Mr. Giannini says that he asked about various kinds of damages in the deposition. I did not find him asking anything very specific. I only found him asking a few questions, and we kept replying, Mr. Buss kept replying that he needed further discovery from the defendant in order to give full information.

We are at this point, and the best I can I do is to amend the complaint based on what we have got. Thank you.

THE COURT: All right. Thank you, Ms. Lavine. Mr. Giannini.

MR. GIANNINI: Good morning, your Honor. I believe I cited several Ninth Circuit cases to the effect that the inexcusable delay of the nature that we are talking about here is a sufficient ground for denying an amendment to the complaint, alone, without other factors --

THE COURT: Suppose we deny it. What about the statement that Ms. Lavine makes with regard to 54(c) of the Rules of Civil Procedure?

MR. GIANNINI: I agree that Ms. Lavine's client is entitled to compensatory damages. I am not arguing with that here.

What I am arguing with are the other issues that are being inserted, such as pain and suffering damages, liquidated damages which are statutory, which existed at the time the original complaint was filed and should have been taken care of when she filed a first amended complaint three months after the original complaint.

There is no new change in the law here that Ms. Lavine is talking about. She has not cited any. The complaint was amended effective April of 1978. So far as there

being a discovery basis for the amendments, there was a discovery cutoff date imposed by the magistrate of March last year. There have been two items of discovery since that time, your Honor.

One was defendant's corporate minutes, which I have not seen as even a potential exhibit in this case, and the other is a list of employees that were furloughed at Los Angeles and that were produced one year ago.

So I don't see any new items that were brought up in discovery that would be a basis for this.

Ms. Lavine is simply seeking to delay the trial date. This is going to cost us at least six months because I am going to want to file a motion on the new complaint. I don't believe they state a claim.

We are going to have to retain an expert to testify as to Mr. Buss' mental condition, if he is going to bring that in issue now for the first time. And apparently Ms. Lavine has retained experts on that.

And we have a witness who has a pacemaker who is a crucial witness in this case; Mr. Buss' immediate supervisor, has retired, taken early retirement from the company. And I have no control over this man.

He may leave the jurisdiction, he may have additional health problems. I think any further delay in this case is going to severely prejudice our defense, because it is based on this witness and other witnesses.

So I would submit there has been no showing as to why there has been this lengthy delay, your Honor. Thank you.

MS. LAVINE: May I respond?

THE COURT: Yes, Certainly. It is your motion.

MS. LAVINE: I would very much like to bring back Mr. Johnson to have him redeposed. There is a critical note which is in hot dispute here. A copy of what we believe is not the note was provided to us, and if indeed Mr. Johnson does have a heart condition, if something might happen to him, his testimony should be taken and quite soon.

We have no discovery cutoff, your Honor. Judge Waters' vacated any cutoff dates in an order, ad I recall it, dated December 20, 1979, and discovery is still open to be done. There is no problem about doing it.

Now, I don't understand how Mr. Giannini thinks it is going to take another

six months to deal with these problems. I don't know what is in his mind when he says that.

If our complaint failed to state a cause of action or state a claim under federal practice, certainly they would have litigated that a long time ago. I don't quite understand how he can say that at this point, except that I assume he could raise that point at any time as a jurisdictional kind of issue.

He says he agrees that we are entitled to compensatory damages. Pain and suffering is a form of compensatory damages that one does not even need to plead in order to recover under both federal and state pleading practice.

If we had not asked for it at all we would still be entitled to it.

THE COURT: If that is true then why don't we just proceed? We have a pre-trial conference date set for next week. I want to move on.

MS. LAVINE: May I suggest this: I will be certainly willing to accept the answer they have vis-a-vis this complaint, the second amended complaint.

All it does is increase the damages allegations.

THE COURT: I take it that Western Airlines would not want to do that, Mr. Giannini?

MR. GIANNINI: It is more than damages, your Honor. There are different allegations as to the theory of the claim that Mr. Buss is making.

THE COURT: All right. I am going deny the motion. And I am also denying the motion to continue the pre-trial conference.

We have it set for August 11. We want to move on with this. And, as you point out, Ms. Lavine, you can certainly increase your damage amount under 54(c), and we will proceed in that fashion.

MS. LAVINE: And you will, of course, award to Mr. Buss any damages to which he is entitled under the statute; is that what I understand?

THE COURT: That he is entitled to, yes.

MS. LAVINE: Certainly. Of course, you understand that does include liquidated damages under 626?

THE COURT: Also we have the matter of the tape of the proceeding between you and Mr. Giannini. I believe it was dated June 18, 1980.

Would you make a copy of this available to Mr. Giannini, please.

MS. LAVINE: Sir, you have the tape.

THE COURT: Yes, I have it here. I was about to give it back to you so that you may make a copy for Mr. Giannini.

MS. LAVINE: I see.

THE COURT: Could you do that?

MS. LAVINE: I don't know if I would be able to physically. I think -- yes, I think I could probably take it to a tape duplicator.

THE COURT: I am not sure that is necessary. What we, perhaps, can do is have the Clerk's Office, if you will furnish a blank tape, Mr. Giannini, just run off a copy at their convenience. And you may pick this up from the Clerk's Office.

Let's set a date for this so that you will have it back in your possession. Let's have this done by Friday noon. I am order the Clerk's Office to do it.

(Whereupon the Court and Clerk confer.)

MS. LAVINE: Your Honor, I am having quite a bit of difficulty being able to get my paper work out in this case because Mr. Giannini has repeatedly provided me with information very late.

THE COURT: Are you talking about the list of exhibits and witnesses, now?

MS. LAVINE: And contentions.

THE COURT: And contentions. Well, it has been filed and it is within the time, as I understand it, and more than fourteen days before the scheduled pre-trial conference on the 11th.

Are you having some problem with that?

MR. GIANNINI: Yes, we are.

MS. LAVINE: Your Honor, wouldn't you agree that under the forty day rule I am entitled to have been conveyed the contentions

quite a bit more in advance than fourteen days?

THE COURT: Let's find out why you got them as late as you did. Mr. Giannini?

MS. LAVINE: And, by the way, I have had quite a bit of difficulty contacting Mr. Giannini. At the end of last week I ended up having to write him two notes.

MR. GIANNINI: Your Honor, on the 24th of July Ms. Lavine and I had a meeting at her office where she showed me documents which she indicated were going to be her trial exhibits, many of which I had not seen before, apparently that were obtained through the Freedom of Information Act by Ms. Lavine.

At that time she told me she could not make copies of the documents because of the Court's order that there be no reproduction of conferences between counsel

in this case.

I told her I did not interpret the Court's order that way as far as copies of documents, and that I wished --

THE COURT: Nor should you have, nor should Ms. Lavine.

What we are talking about is specifically the kind of matter which is incorporated in this tape. And I indicated very specifically we are not to tape meetings between counsel.

Now, you may tape, as the magistrate had indicated, discovery proceedings. And I would not include meetings between counsel to be part of the discovery proceedings; but to merely duplicate and copy material, and to give it to counsel, is not encompassed by my order at all.

MS. LAVINE: May we have a stenograph reporter present at these meetings?

THE COURT: For what purpose?

MS. LAVINE: One, to make sure that we have all of our contentions and have them prepared and don't have to repeat them all over again to another secretary or into a dictating machine, and, two, so that you know exactly what took place.

THE COURT: Do you oppose that, Mr. Giannini?

MR. GIANNINI: Well, your Honor, I was going to get to that.

THE COURT: All right.

MR. GIANNINI: We have really a performance in my law office by Ms. Lavine with her father, her client, her father's nurse and the court reporter. And Ms. Lavine has got on the soapbox and made a lot of speeches, but we didn't accomplish very much.

And I feel that we would accomplish a lot more just if Ms. Lavine and I could meet to discuss the pre-trial order. I feel that she is putting on an act for her client, and I don't feel that the court reporter, which I told Ms. Lavine I objected to, was serving any purpose there other than Ms. Lavine's attempts to try and set me up for some kind of sanction in this case.

I told her that her contention should be in writing when the pre-trial rule was done.

I attempted to contact her Wednesday and Thursday by telephone of last week and was told she was out of the office and also out Friday.

So I see with the time remaining an impossibility on August 11 to get a pre-trial order in. Knowing the time it take with Ms. Lavine to stipulate to things I

don't see how we are going to get an order in this week, your Honor.

THE COURT: Maybe the case is going to have to be dismissed and started all over again. I don't understand why two members of this bar cannot get together and comply with the local rules, and provide this Court with a proposed order so that we can move along.

In the absence of that, perhaps, then, we should just be more rigid in our application of the local rules. I expect there to be a diligent effort made by both counsel here to be ready for the pre-trial conference. And it is August 11. It will remain that.

And if we find that we are not proceeding, for whatever the reasons are, then I will have to deal with those next week. All right.

MR. GIANNINI: At this date I may have some problems with another matter that is before this Court and I may be engaged in deposition in the next two days. So that is going to take at least --

THE COURT: That is something that you are going to have to work out with Ms. Lavine. You are going to have to make yourself available to some degree. And it has to be, of course, reasonable, whatever requests Ms. Lavine makes of you and you of her.

And, as I say, I expect to see the fruits of this labor on Monday, the 11th. In the absence of that, depending upon why we have not been able to reach the goal that has been set, then I will have to make a determination as to where the fault lies and deal with proper sanctions.

MR. GIANNINI: Do we have a one week continuance, your Honor, to the 18th?

THE COURT: There will be no continuance.

And with regard to the stenographic recording of any meetings between counsel, unless given the advance approval of this Court there will be none.

MS. LAVINE: Your Honor, I object to that under the due process clause of the Fifth and Fourteenth Amendments.

THE COURT: Fine.

MS. LAVINE: And Title 28, and the Fifth Amendment and Title 28 U.S.C. Section 753.

And I again request the right to a stenographic reporter for coverage of all proceedings.

THE COURT: It is denied. All right. The next matter, please.

MS. LAVINE: Your Honor, my father wishes to address you on the sanctions that

you entered against me.

MR. LAVINE: Your Honor, I did not hear the proceedings which you had the last time, when I was present, in pronouncing any sanctions on Joan Lavine. This is the young lawyer who has a splendid record, and we like to keep it that way.

And when the matter finished, as I recall, your Honor stated that she was to deliver the tape to you, and we went outside, and I said, "Get it to the Judge today, if you can," and she brought it up here to you the very same day you asked for it.

And, now, the order at that time was that if she didn't produce the tape the sanctions would be pronounced.

THE COURT: Since she produced it, then, what is the issue here?

MR. LAVINE: Because the minute order reads that sanctions have been pronounced, an order that you entered two days after she produced the tape and after she had complied completely.

And I move to vacate or correct the Court's minutes.

THE COURT: All right. It will be corrected. Could we also correct those where she attempted to present me with sanctions?

MR. LAVINE: And will you vacate any --

THE COURT: Mr. Lavine, when your daughter attempted to cite the Court for whatever it was -- do you remember that? Can we vacate that as well?

MR. LAVINE: Yes, your Honor.

THE COURT: All right, Thank you.

MR. LAVINE: If your Honor corrects the minutes to show that there are no sanctions pronounced against her we will

vacate the order also, we move to vacate it.

THE COURT: I see.

MR. LAVINE: And I wish your Honor to instruct either the Clerk or opposing counsel to give us notice. We don't get notices.

The record will show that they have served papers on your Honor, which your Honor has signed, without any notice to us, and prior to giving us any notice or hearing.

THE COURT: The Court expects notice to go to all parties.

MR. LAVINE: Thank you, your Honor.

THE COURT: Thank you, Mr. Lavine.

MR. LAVINE: Thank you for your consideration.

THE COURT: Thank you very much.

* * *

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE TERRY J. HATTER, JR.,
JUDGE PRESIDING

ROBERT A. BUSS, Plaintiff, vs. WESTERN AIRLINES, Defendant.	)	CV 77-124-TJH

C E R T I F I C A T E

I, PATRICIA FERRIER, do hereby certify that I reported the proceedings in the above-mentioned cause on August 4, 1980. I further certify that the foregoing is a true, actual and correct transcript of said proceedings.

Los Angeles, California, dated this (15th) day of September, 1980

/s/
PATRICIA FERRIER
Offician Reporter

APPENDIX K

FILED
AUG 7 1980
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY (init) DEPUTY

JOAN CELIA LEVINE
304 South Broadway, Suite 408
Los Angeles, California 90013

Telephone: (213)627-3241

Attorney for Plaintiff
Robert A. Buss

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT A. BUSS, Plaintiff, vs. WESTERN AIRLINES, INC., a corporation, Defendant.	CASE NO. CV-77-124-TJH(Kx)

PLAINTIFF'S STATEMENT OF PROGRESS RE PREPARATION OF PRETRIAL CONFERENCE STATEMENT

TO THE HONORABLE TERRY J. HATTER, U.S. DISTRICT JUDGE PRESIDING:

Comes now the plaintiff Robert A. Buss and presents to this Court a second Pretrial Conference Statement and Proposed Order thereon.

The defendant, through the counsel Paul L. Giannini, has advised plaintiff's counsel that he is unwilling to execute said document, apparently due to the reservations provisions contained on the signature page.

Plaintiff's counsel wishes to advise this Court that she was first conveyed what to insert in a pretrial conference statement yesterday in a piecemeal fashion. A portion contained in section IX was first conveyed to her close to noon yesterday, in a meeting at Mr. Giannini's office August 6, 1980/and then the defendant's counsel did not make his contentions of law and of fact available until about 3:30 p.m.

to 4:00 p.m. by leaving same at his office for her.

Plaintiff's counsel asked Mr. Giannini to come over to her offices at about noon today to go over a final draft attached hereto. Instead, he sent a messenger to her offices to pick up a copy, and did not communicate with Ms. Lavine until about 2:50 p.m. when he stated as set forth the above.

Plaintiff maintains that the pretrial statement is appropriate in its present form, and respectfully requests that this court execute his first proposed pretrial statement or this one as drafted.

Dated: August 7, 1980

Respectfully submitted,

/s/
Joan Celia Lavine
JOAN CELIA LAVINE, Attorney
for Plaintiff Robert A. Buss

PROOF OF SERVICE

I, the undersigned, certify and declare that I am a citizen of the United States, over the age of 18 years, employed at in the County of Los Angeles, State of California, and not a party to the above entitled cause. On August 7, 1980 I served a true and correct copy of PLAINTIFF'S STATEMENT OF PROGRESS RE PREPARATION OF PRETRIAL CONFERENCE STATEMENT

by depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the following

Darling, Hall, Rae and Gute
523 West Sixth Street, Suite 400
Los Angeles, California 90014

Place of Mailing: Los Angeles, California

Executed on August 7, 1980 at Los Angeles, California.

I hereby certify that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I certify under penalty of perjury that the foregoing statements are true and correct of my own personal knowledge.

/s/

Joan Celia Lavine

Signature

BEST AVAILABLE COPY

JOAN CELIA LAVINE
304 South Broadway, Suite 410
Los Angeles, California 90013

Telephone: (213)627-3241

Attorney for Plaintiff Robert A. Buss

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT A. BUSS Plaintiff, vs. WESTERN AIRLINES, INC., Defendant.	) CASE NO.)CV-77-124-TJH(Kx)

PROPOSED PRETRIAL STATEMENT

AND PROPOSED ORDER THEREON

Index

		Page
I.	TYPE OF ACTION AND THE PARTIES TO THE ACTION	2
II.	FEDERAL JURISDICTION AND VENUE	3
III.	ADMISSION OF FACTS	4
IV.	RESERVATION OF FACTS	6
V.	UNCONTESTED FACTS	6

Index (continued)

VI. ISSUES OF FACT TO BE LITIGATED 7

PLAINTIFF'S CONTENTIONS OF FACT 8

DEFENDANT'S CONTENTIONS OF FACT 18

VII. EXHIBITS TO BE OFFERED AT TRIAL 22

VIII. ISSUES OF LAW WHICH REMAIN TO BE LITIGATED UPON THE TRIAL 24

PLAINTIFF'S CONTENTIONS OF LAW 25

DEFENDANT'S CONTENTIONS OF LAW 31

IX. OTHER MATTERS 34

ORDER OF COURT AND SIGNATURE PAGE 37

EXHIBIT "A", PLAINTIFF'S EXHIBIT LIST 38

EXHIBIT "B", DEFENDANT'S EXHIBIT LIST 44

JOAN CELIA LAVINE
304 South Broadway, Suite 410
Los Angeles, California 90013

Telephone: (213)627-3241

Attorney for Plaintiff Robert A. Buss

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT A. BUSS Plaintiff, vs. WESTERN AIRLINES, INC., Defendant.	) CASE NO.) CV-77-124-TJH(Kx)

PLAINTIFF'S PROPOSED PRETRIAL STATEMENT AND PROPOSED ORDER THEREON

I. TYPE OF ACTION AND THE PARTIES TO THE ACTION

This action is a lawsuit brought by the plaintiff Robert A. Buss against the defendant Western Airlines, Inc., for age discrimination in employment pursuant to the provisions of the Age Discrimination in Employment Act of 1967, Title 29 United States Codes, Sections 621, et seq., and particularly Sections 621, 623, and 626 and Section 15 of the Fair Labor Standards of 1938, as amended Title 29 United States Codes, Section 201, et seq., and the Fifth and Fourteenth Amendments, U.S. Constitution.

The pleadings which raise the issues in this case are all of the papers and pleadings on file herein. This includes the first amended complaint, the answer thereto and this proposed pretrial conference statement and order as well as all the other

files and records herein.

II. FEDERAL JURISDICTION AND VENUE

Federal jurisdiction is invoked by the plaintiff based on Title 29, United States Codes, Sections 621, et seq., and particularly Sections 621, 623, and 626, and Section 15 of the Fair Labor Standards Act of 1938, as amended Title 29 United States Codes, Section 201 et seq., and the Fifth and Fourteenth Amendments.

Plaintiff timely filed his notices of intent to sue the defendant Western Airlines at both the state and federal levels, on or about December 30, 1975 and November 17, 1975 respectively.

The United States District Court has jurisdiction to hear the claims of the plaintiff as provided for in the above stated laws of the United States.

Since the principal place of business of the defendant Western Airlines, Inc. is at Los Angeles, California within the Central District of California, the United States District Court for the Central District of California is the proper location for suit to be brought against it. There is no dispute that venue lies in this district.

III ADMISSION OF FACTS

It is hereby stipulated by and between the plaintiff Robert A. Buss, through his counsel Joan Celia Lavine, and the defendant Western Airlines, Inc., as follows:

1. The plaintiff Robert A. Buss is 67 (sixty-seven) years of age, having been born on January 23, 1913. On October 17, 1975, when he was involuntarily terminated from his employment with Western Airlines,

Inc., he was between 62 and 63 years of age. On October 17, 1975 and to the present Mr. Buss, the plaintiff, has at all times been within the protected class as provided for in Title 19 U.S.C., Sections 621, et seq., and particularly 621, 623 and 626 of Title 29 United States Codes.

2. The defendant Western Airlines is an "employer" within the provisions of Title 29 U.S.C., Sections 621, et seq., and particularly Title 29 U.S.C., Section 630(b), and Section 15 of the Fair Labor Standards Act of 1938, as amended Title 29 United States Codes, Section 201, et seq., and the Fifth and Fourteenth Amendments, U.S. Constitution, and therefore subject to said provisions and the enforcement of same.

3. The plaintiff duly and in a timely fashion registered complaints with the appropriate state and federal agencies and

notices of intent to sue and has exhausted his administrative remedies as required by law. This United States District Court has jurisdiction to proceed to trial in the above entitled matter and to enter judgment against the defendant Western Airlines, Inc. upon a finding of liability and damages. The plaintiff filed his appropriate notice of intent to sue and complaint with the United States Department of Labor on or about December 30, 1975. receipt of that notice of intent to sue was received on or about January 12, 1976, against Western Airlines for discharging him on account of his age on October 17, 1975.

The plaintiff Robert A. Buss filed a complaint and notice of intent to sue against Western Airlines alleging discrimination on account of his age due to his discharge on October 17, 1975 in writing

on November 17, 1975 with the Fair Employment Practice Commission, State of California, Agriculture and Services Agency.

4. The plaintiff Robert A. Buss was replaced in his position by a younger person, Robert Morrison, born on August 21, 1926, when Mr. Buss was discharged on October 17, 1975.

5. Mr. Buss has at no time been offered reemployment with Western Airlines since he was terminated on October 17, 1975.

6. Prior to his discharge from his employment with Western Airlines on October 17, 1975, he had worked for Western Airlines for about 35 years, starting in 1940.

7. At the time of his termination on October 17, 1975, Mr. Buss was Director, Flight Crew Ground Training. He had been in this position for about five years prior to his termination on October 17, 1975.

Plaintiff Robert A. Buss and defendant Western Airlines, Inc., a corporation, hereby admit the above stated facts in Section III, and paragraph 1, lines 4 to 8, ending with numbers "630(b)", page 18 hereof.

IV RESERVATION OF FACTS

The reservation as to the facts recited in paragraph III above are as follows: None has been supplied to plaintiff to date by the defendant.

V. UNCONTESTED FACTS

The following facts, though not admitted, are not to be litigated upon the trial: None has been supplied, however the plaintiff once again moves that this Court enter a default against the defendant so that there is an admission of liability and prevent the defendant from introducing any

evidence at the time of the trial on the damages.

VI. ISSUES OF FACT TO BE LITIGATED:

Except for the facts admitted in Section III hereinabove, and as contained on the following page, lines 13 and 14, the following issues of fact remain to be litigated, to-wit:

If this Court does not enter a default against the defendant, then the issues of liability indicated below remain to be litigated.

PLAINTIFF'S CONTENTIONS OF FACT

Comes now the plaintiff Robert A. Buss and sets forth the following contentions of fact, to-wit:

1. Plaintiff was illegally, wilfully, wantonly, intentionally discharged and

terminated from his employment with Western Airlines, Inc., as Director, Ground School Flight Training on and as of October 17, 1975 on account of his advancing age in violation of Title 29 U.S.C., Sections 621, et seq., and particularly 621, 623 and 630, and the Fourteenth Amendment, U.S. Constitution, by the defendant Western Airlines, Inc.

2. The above discharge and termination on October 17, 1975 was and is involuntary and without good cause of any kind whatsoever. He had worked for Western Airlines for about 35 years.

3. On the date of the above mentioned illegal, wilful, wanton, intentional discharge without good cause and which was involuntary, the plaintiff Robert A. Buss was about 62-1/2 years old. He was born on January 23, 1913.

4. Mr. Buss is presently 67 years of age.

5. Mr. Buss was and is entitled to have continued his employment to the age of 70 years.

6. The purported pension plan for retirement did not and does not provide for involuntary retirement prior to the age of 70, legally and within the provisions of ADEA.

7. The purported pension-retirement plan was and is a subterfuge for discrimination on account of age and to evade ADEA.

8. The man who replaced Mr. Buss on or about November 10, 1975, after he was discharged on or about October 17, 1975, was Mr. William Morrison, and he was substantially younger than Mr. Buss, having been born on or about August 21, 1926.

9. Mr. Buss's replacement, William Morrison, was paid very substantially higher salary of about two to three times the salary that Mr. Buss was paid to do the same job.

10. Mr. Buss was not furloughed in the sense of furloughing policies and practice at Western Airlines.

11. Mr. Buss did not voluntarily retire at any time from his work at Western Airlines; he was involuntarily retired.

12. Mr. Buss has never at any time been offered reinstatement or employment of any kind with Western Airlines.

13. Mr. Buss attempted to obtain other employment after his discharge from Western Airlines, but was unable to do so.

14. There are and were not written warnings or instruction conveyed to Mr. Buss prior to his discharge notifying him

of any unacceptable conduct on his part or warning him that he would be discharged if he failed to conply with any instruction.

15. About one month after Mr. Anton Favero became senior vice president he decided to "retire" Mr. Buss.

16. There was and is no performance evaluation in writing made of Mr. Buss Prior to his discharge while he was director of flight Crew Ground Training.

17. On or about October 21, 1975, Anton Favero, the senior vice president who had ultimate authority to terminate Mr. Buss and who made that decision to terminate him, in a letter about Mr. Buss stating that he was a very satisfactory employee and that he would rehire Mr. Buss if the opportunity arose, praised him and found him to be fully competent to do his work and to have done a very satisfactory work.

18. The defendant has produced no evidence of good cause to terminate Mr. Buss for any reason, whether on account of the gasoline and oil crises of 1974, on account of any purported performance dissatisfaction or due to a need to reduce staff and/or personnel. Plaintiff contends none of these existed or exists.

19. The defendant has concealed substantial amounts of evidence and discovery in this case, including but not limited to a letter or note dated September 16, 1975 in the original sent to Robert V. Johnson, a vice president of Western who was the immediate supervisor of Mr. Buss, by senior vice president Anton Favero, the full names and locations of many persons identified in discovery and the home phone numbers of almost all of persons identified as persons with knowledge of facts herein.

The defendant has failed to specifically state which persons have knowledge of which facts in discovery.

The defendant has failed to produce full data, and particularly under oath, of salary and other benefits paid to the successors of the plaintiff Robert A. Buss.

20. Plaintiff contends that there was no particular staff reduction in his department after he left.

21. Plaintiff contends that the quality of training deteriorated substantially after he was terminated on October 17, 1975.

22. Mr. Buss contends that a presumption arose and continues that he was discharged involuntarily and without good cause due to the facts that he was paid unemployment compensation by the State of California as a result of his October 17, 1975 discharged. Plaintiff contends that

the defendant Western Airlines at no time contested his being paid unemployment compensation by the State of California, but on the contrary advised him to seek it.

23. Mr. Buss contends that his replacement-successor Mr. William Morrison was paid the following gross salary to which Mr. Buss is entitled as damages for lost salary and wages in part:

Year	Amount	
1974	55,618.42	
1975	60,824.31	
1976	69,603.96	
1977	78,349.90	
1978	88,190.00	approximately at least
1979	98,267.00	approximately at least

The defendant has failed to provide in any form, whether or not under oath, data on the gross salary of Mr. Morrison for the full years of 1978, 1978 or 1980 to date.

The defendant has failed to supply data about the other employment benefits of Mr. Morrison at any time: this includes such information as the pension plan, retirement or annuity benefits, health insurance, travel benefits, death benefits, other kinds of accident or life insurance or investment benefits.

Since the defendant has never at any teime provided under oath information concerning Mr. William Morrison's employment benefits, including gross salary and all other benefits, Mr. Buss projects and estimates that he benefits range from 25 percent to 35 percent of Mr. Morrison's salary per year.

Mr. Buss contends that the salary increase for Mr. Morrison per year has ranged from about 12.56 percent per year to about 18 per cent per year. Mr. Buss contends

that he is entitled to recovery all of the employment benefits paid and provided to William Morrison and at his rate of employment benefits to the age the age of 70 years. This includes gross salary, retirement, pension and death benefits, insurance benefits of all kinds, investment benefits, and all other benfits associated with Mr. Morrison's employment with Western Airlines.

Mr. Buss contends that his rate of pay at the time of his being involuntarily and without good cause terminated from his employment with Western Airlines on October 17, 1975 was about $31,143.88 at a base rate of $1159.38 for 26 pay periods for salary plus fringe benefits.

24. Mr. Buss contends that his involuntary discharge without cause on October 17, 1975 was intentional, wilful, malicious,

wanton and that he is therefore entitled to liquidated damages for this wilful, intentiona, malicious, wanton misconduct in discharging him involuntarily on account of his age.

25. Mr. Buss contends that he was and is qualified to be the Director, Flight Crew Ground Training and to be reinstated.

26. Mr. Buss contends that without his consent, prior to October 17, 1975, a letter was posted, executed by vice president Robert Vincent Johnson, stating Mr. Buss was "retiring" as of October 17, 1975. Mr. Buss contends that he had never applied for or told anyone that he wanted to, intended or wished to in any way retire from or leave his position at Western Airlines.

27. Plaintiff Robert A. Buss contends that he is entitled to reinstatement in his position as Director, Flight Crew

Ground Training, that of his successor and/or any comparable position.

28. Plaintiff contends that he is entitled to compensatory damages for pain and suffering for the pain, humiliation, anguish and agrivation as well as various losses from loss of the use of the salary and other employment benefits to which he was and is entitled to the age of 70 based on the salary benefits and other employment benefits paid to William Morrison.

29. Plaintiff contends that defendant has admitted the position and advocates that the plaintiff is receiving greater retirement benefits from age 62 than if he had retired at age 65 or 70.

30. Plaintiff contends that since this is an intentional tort, he is entitled to recover punitive damages in the sum of $1,000,000.00 for the wilful, malicious,

intentional, oppressive misconduct of the defendant Western Airlines. (Fifth and Fourteenth Amendments, U.S. Constitution)

31. Plaintiff contends that Arthur Kelly, chairman of the board of Western Airlines, would make the statements contained in his deposition, dated on or about August 17, 1978.

32. Plaintiff contends that Dominic Renda, previously president of Western Airlines, Inc. would make the statements contained in his deposition, taken on or about April 6, 1979.

33. Plaintiff contends that William Morrison would make the statements contained in his deposition, taken on or about March 30, 1979.

34. Plaintiff contends that donald Vena would make the statements contained in his deposition taken on or about August 16, 1978.

35. Plaintiff contends that Carl Nesbitt would make the statements contained in his deposition taken on or about August 16, 1978.

36. Plaintiff contends that Robert Jay Schnitzer would make the statements contained in his deposition, Aug. 14, 1978.

37. Plaintiff contends that Robert Vincent Johnson would make the statements contained in his deposition, taken May 31, 1978, and particularly would identify a note date September 16, 1975 as being the one referred to in his deposition and would not identify a note dated September 15, 1975 as being the one referred to in his deposition.

Plaintiff contends that the defendant is concealing a note dated September 16, 1975 and has not yet produced it. Plaintiff contends that a copy of a note dated

September 15, 1975 the defendant is attempting to hold out as one dated September 16, 1975.

38. Plaintiff contends that Dick Brown would state that Western Airlines Employees are given at least one warning orally and in writing that they will be discharged for unsatisfactory performance of work.

39. Plaintiff contends that the U.S. Department of Labor, in investigating Mr. Buss's administrative complaint, found the defendant Western Airlines, Inc., to be discriminating against Mr. Buss on account of his age in discharging him from its employment on October 17, 1975.

40. Plaintiff contends that any sums of money paid to him from third parties not involved with this lawsuit are sums of money paid from collateral sources and such payments are irrelevant and inadmissible

in this case, and not set-offs.

41. Plaintiff contends that a substantial portion of the funds paid to Mr. Buss were and are his property at all times and were a form of reimbursement to him of his own moneys and may not be used as set-offs against him.

42. Plaintiff contends that a prima facie case of age discrimination in employment has been presented and that the defendant has no evidence to refute it.

43. Plaintiff has sought to contend that Western Airlines has engaged in a pattern and practice of discrimination on account of age, but has been refused discovery sufficient to be able to complete the complicated statistical studies necessary as provided for in McDonnell Douglas Corp. v. Green, 411 US 792, 36 L.Ed.2d 668 (1973). Plaintiff contends that the defendant

has concealed this data and information and that an inference and presumption arise as a result that the defendant has engaged in a pattern and practice on account of advancing age of discrimination against its employees.

44. Plaintiff contends that his discharge was not based on its legitimate business consideration, and that any excuses given by the defendant for discharging him are mere pretext for discrimination.

45. Plaintiff contends that his life expectancy is well beyond the age of 70 years.

46. Plaintiff contends that defendant's various defenses are inherently inconsistent and in conflict. Plaintiff denies the contentions of the defendant generally and specifically.

47. Plaintiff contends that he filed an age discrmination complaint against Western Airlines on November 17, 1975 regarding his involuntary termination, from his employment on or about October 17, 1975 with the Fair Employment Practice Commission, State of California, Agriculture and Services Agency.

48. Plaintiff contends that he also filed an age discrimination complaint against Western Airlines by mailing it on December 30, 1975, to the U.S. Department of Labor, Employment Standards Administration, in the form of a notice of intent to file and bring suit against Western Airlines, which was acknowledged as received by the Assistant Area Director Robert W. Terwilliger on our about January 12, 1976.

49. Plaintiff contends that conciliation efforts took place and that the U.S.

Department of Labor attempted to pursuade Western Airlines to reinstate Mr. Bu ss and to pay him his lost salary and benefits, without success.

50. Plaintiff contends that he exhausted all administrative and conciliation requirements and that the United States District Court has jurisdiction in the above entitled matter.

51. Plaintiff contends that he is entitled to recover reasonable attorneys' fees and that he counsel have been requiree to expend at least 2000 work hours and according to proof additionally and have sustained at least approximately $12,000.00 in expenses and costs of litigation herein.

Plaintiff contends that he is entitled to reasonable attorneys' fees for both trial and appellate level work and the costs and expenses of being required to proceed

at all levels.

52. Plaintiff incorporates herein by reference as though fully set forth the contentions of law attached hereto.

53. Plaintiff contends that any proposed or offered items of purported evidence and or proposed witnesses not identified fully in discovery and pretrial, including their full names, work and home addresses and phone numbers, be excluded from evidence and that a presumption arises that any testimony or other evidence each might give or supply is adverse to the defendant.

54. Plaintiff incorporates herein by reference as contentions of fact those statements contained in his Section III hereof containing a proposed statement of admissions of fact. Plaintiff moves that they be deemed admitted by the defendant Western Airlines.

55. Plaintiff reserves the right to augment, revise or otherwise alter this pretrial statement as he deems necessary and proper.

56. Plaintiff once again moves for the entry of a default for failure of the defendant to provide discovery as sought over any extended period of time and contained in the files and records herein.

57. Plaintiff contends that he is entitled to interest on any damages awards made herein and the costs and expenses of ligation from the date of his wrongful discharge on October 17, 1975, at the rate of ten percent per annum.

58. Plaintiff contends that he is entitled to amend to name any corporation or other business entity into which Western Airlines, Inc., may merger or become consolidated with or whoever the successor

designated proper defendant(s) is(are) as provided by law should Western Airlines cease to exist.

59. The plaintiff Robert Buss contends that he was throughout 1975 and has at all times relevant herein been duly and fully qualified to be Director, Flight Crew Ground Training the position which his successor William Morrison held and/or any comparable position since he took on the duties and responsibilities of that job.

DEFENDANT'S CONTENTIONS OF FACT

1. Defendant Western Air Lines, Inc. ("Western") is a Delaware corporation, authorized to do business and doing business in the County of Los Angeles, State of California, at all times herein mentioned. Defendant is an employer within the meaning of 29 U.S.C. §630(b). Western is a commercial

airline carrier certificated by the Civil Aeronautics Board.

2. Plaintiff was first employed by defendant on February 15, 1940, and became enrolled in defendant's Retirement Income Plain ("Retirement Plan") on or about July 1, 1952, for non-contract employees.

3. For purposes of computing retirement benefits and seniority, the above dates were used by defendant.

4. The last day worked by plaintiff was October 17, 1975. Plaintiff was told in or about September of 1975 that he was being relieved of his duties, but that he would receive ten weeks salary until January 23, 1976, as well as accrued vacation pay.

5. Plaintiff applied for "early retirement" under defendant's Retirement Income Plan on January 26, 1976.

6. Plaintiff received as part of that retirement income plan, a lump sum payment in the amount of $17,469.39.

7. Plaintiff receives under the Retirement Income Plan of defendant the monthly payment of $921.67 per month from February 1, 1976, and each month thereafter. Plaintiff has received payments in that amount since February 1, 1976.

8. Plaintiff was Director of Ground Training - Flight from 1971 to June 25, 1974, when his title was changed to "Director-Flight Crew Ground Training."

9. Plaintiff was "Director-Flight Crew Ground Training" from June 25, 1974 to his furlough on October 17, 1975.

10. Prior to 1971, plaintiff was "Assistant to Vice-President, Flight Operations", who was H. W. Coward.

11. Plaintiff filed a notice of intent to sue with the Department of Labor on or about January 12, 1976.

12. Plaintiff's annual salary at the time of his retirement was approximately $30,004.00.

13. Plaintiff was informed he was to be placed on furlough as Director-Flight crew Ground Training in or about September of 1975. Plaintiff was informed at that time that his separation from Western was permanent.

14. Plaintiff was counselled by A. B. Favero, Senior Vice President, Operations, and Robert V. Johnson, Vice President Flight Operations, on the utilization of his time and that of the employees under his supervision on many occasions from April 1974 until he was furloughed in 1975.

15. Plaintiff refused to qualify himself to do direct training in the flight school as requested by both Messrs. Favero and Johnson.

16. Mr. Richard McDonald, a manager under Mr. Buss was also instructed to qualify himself to train in the flight school program, and did so qualify, as did other employees.

17. Plaintiff refused, in a memorandum dated June 27, 1974, to furnish A. B. Faveero either with "instructor hours available" or "instructor hours utilized," as he had been requested to do. This information was necessary for management to make appropriate personnel decisions.

18. Plaintiff was counselled by Robert V. Johnson to furnish the information to Mr. Favero which was requested by him in a timely fashion, but failed and refused to

do so.

19. Plaintiff on more than one occasion complained to Robert V. Johnson, his supervisor, about responding to requests for information regarding the utilization of personnel in his department.

20. Messrs. Favero and Johnson made it clear that they believed plaintiff's department to be under-utilizing its personnel, on several occasions. Nevertheless, plaintiff did not make any efforts to reduce the number of employees under his supervision until ordered to do so by his superiors.

21. During the period April 1974-1975, some of the personnel under plaintiff's supervision were placed on furlough or transferred to other divisions or departments for reasons of ecomony.

22. Due to a shortage of fuel, and the Arab oil embargo, flight operations for defendant were curtailed during the 1974-75 period. Many of defendant's employees in all departments of the company had to be placed on furlough or terminated, for reasons of economy.

23. At the time of plaintiff's separation from Western, the Company had a policy of furloughing management employees on the basis of overall performance evaluation in which the least effective (lowest performance ratings) management employees were those furloughed first. Plaintiff's overall evaluation by his superiors was that his performance as a director of the flight crew training school was grossly inefficient and ineffective.

24. The employee who replaced plaintiff as director of the flight crew training

school was able to manage and operate the school and its employee instructors with one-third fewer employees than those supervised by plaintiff, while still training substantially the same number of pilots as previously.

25. The primary responsibilities and duties of the Director-Flight Crew Ground Training was to be responsible to the Vice President-Flight Operations, for all (Federal Aviation Administration) required recurrent, initial and transitional ground school and flight simulator training of pilot personnel.

26. Western's Retirement Income Plan for non-bargaining employees ("Retirement Plan") was and is a bona fide retirement or pension plan, and was not instituted as a subterfuge to evade the purposes of the ADEA.

27. The Retirement Plan has uniformly been applied so that retirement at the normal retirement date has always been the case. The Retirement Plan provided in October of 1975 for a normal retirement date of age 65.

28. Plaintiff's employment would have ceased on February 1, 1978, had he not been terminated in October of 1975, as the provisions of the Retirement Plan would have forced his retirement on that date.

29. Plaintiff voluntarily enrolled in the Retirement Plan and continued making contributions thereto while employed at Western.

VII. EXHIBITS TO BE OFFERED AT THE TRIAL

The plaintiff sets forth his exhibits to be presented and offered into evidence at trial as contained in Exhibit "A" hereto.

The plaintiff moves that no exhibits of the defendant be permitted to be introduced at trial. However, if this motion is overruled, the plaintiff attachs a list of exhibits in Exhibit "B" attached hereto, with his objections.

Plaintiff wishes to notify this Court that he does not have any recollection, through his counsel, of having ever been displayed the following exhibits nor have they been idenfied in discovery: Defendant's Exhibit List Items D, F, G, H, J, T, V

A

Plaintiff reserves the right to add to, alter or amend his objections to exhibits at the time of trial or prior thereto.

Plaintiff specifically objects to and does not consent to or approve in any way the inclusion of exhibits which were not

produced in discovery and/or pretrial production under Local Rule 9 and F.R.Civ.P., Rule 16, and moves that they be excluded from introduction into evidence at any trial or that the jury be instructed to draw adverse inferences due to the fact that they have been withheld in discovery, and that a presumption of concealment and that the information contained in same is adverse to defendant.

VIII. ISSUES OF LAW WHICH REMAIN TO BE LITIGATED UPON THE TRIAL

Except as to those statements contained in Sections I, II and III hereinabove, the following issues of law remain for this Court's consideration and to be litigated, to-wit:

PLAINTIFF'S CONTENTIONS OF LAW

Comes now the plaintiff Robert A. Buss and sets forth the following contentions of and memorandum of law, pursuant to United States District Court for the Central District of California Local Rules 9 and 12, to-wit:

1. Plaintiff has been discriminated against by the defendant on account of his age by being illegally, wilfully, intentionally, wantonly, maliciously and oppressively discharged due to his advancing age from his employment with Western Airlines on or about October 17, 1975. He seeks damages for these discriminatory acts pursuant to the provisions of Title 29, U.S.C., Sections 621, et seq., and particularly Title 29 U.S.C., Sections 621, 623, 626 and 630, commonly known as the Age Discrimination in Employment Act; Title

42 U.S.C., Sections 1981 through 1988; the Fair Labor Standards Act of 1939, as amended, Title 29, U.S.C., Sections 201, et seq. and the Fourteenth Amendment, U.S. Constitution. (Laugesen v. Anaconda Company, 510 F.2d 307, 6th Cir., 1975; Bishop v. Jelleff Associates, 308 F.Supp. 579, D.C., 1974; Schultz v. Hickok Mfg. Co., 358 F.Supp. 1208, N.D.Ga., 1973)

2. Plaintiff contends that he has made out and the law currently requires that he establish the following four factors to make out a prima facie case of discrimination in employment:

a) That the plaintiff was at the time of his discharge and is within the protected group of 40 to 70 years of age;

b) That he was demoted, discharged or not hired or rehired;

c) That he was replaced by a younger

person or persons.

d) That he was and is qualified to do the job from which he was discharged.

3. Plaintiff contends that he need show only that his age was one of the motivating, causal factors in his discharge from his employment. (Bishop v. Jelleff Associates, 308 F.Supp. 579)

4. Plaintiff contends that the discharge of an employee who is older in order to replace him with a younger person is a per se form of discrimination.

5. Intentional discharge of an employee on account of his age is a form of bad faith discharge without cause which entitles the illegally discharged employee to liquidated damages under Title 29 U.S.C., Section 626.

6. A lawsuit for damages and injunctive relief for age discrimination in employment is a suit sounding in tort. (Tillman

v. Wheaton-Haven Recreation Asso., 517 F.2d 1141, 4th Cir.,1975)

7. The plaintiff is entitled to a trial by jury on all phases of this case. Plaintiff sought a trial by jury, which was not opposed by the defendant to the best of plaintiff's knowledge in any way.

8. The issue of "wilfulness" is an issue of fact for the jury. (Devitt and Blackmar Jury Instruction, No. 16.12 (2nd Ed.)

9. "Wilfulness" is an act done voluntarily, intentionally and with the specific intent to do something the law forbids.

10. The defendant has waived any objections to a trial by jury.

11. Plaintiff is entitled to recover compensatory damages for pain and suffering and for other economic losses, including loss of benefits and investment value

of funds.

12. Where a defendant conceals or otherwise secretes or destroys evidence, a presumption arises against it that said evidence and information is adverse to the position of the defendant; the jury may draw an inference in favor of the plaintiff and against the defendant from such concealed, secreted evidence and information that it is guilty of discrimination on account of age. (Devitt and Blackmar, Jury Instructions, 2nd Ed., No. 11.19)

13. Plaintiff incorporates herein by reference as though fully set forth those contentions contained in the contentions of fact attached herein.

14. Plaintiff incorporates herein by reference as though fully set forth the files and records herein, and particularly the Local Rule 3(1) stipulation filed herein

on August 15, 1979 stating the plaintiff's contentions as to issues of discovery.

15. Plaintiff contends that payments made to him of his own money, of an annuity and/or from any third party and source are collateral sources and may not be set off against any damages herein. (Helfend v. Southern California Rapid Transit Dist. 2 Cal.3d 1

16. Plaintiff is entitled to recover reasonable attorneys' fees, including those for work at the appellate level, and costs and expenses of litigation. (Title 29, U.S.C., Section 626(b); Title 29 U.S.C., Section 216(b); Cleverly v. Western Electric, 594 F.2d 638) This is mandatory where the plaintiff prevails.

17. Plaintiff is entitled to seek recovery based on projected inflationary trends on the gross salary and benefits

to which he would be entitled as a result of his employment. (U.S. V. English, 521 F.2d 63, 9th Cir.)

18. Punitive damages are available in an age discrimination case. (Murphy v. American Motors, 410 F.Supp. 1403)

19. Compensatory damages for pain and suffering are available in age discrimination in employment cases as well as other discrimination cases. (Title 29, U.S.C., Sections 621, et seq.; Murphy v. American Motors, 410 F.Supp. 1403)

20. The defendant had no authority to involuntarily retire the plaintiff prior to the age of 70 as it did. Even the purported pension plan provided for retirement by the plaintiff only on a voluntary basis prior to age 65. (29 U.S.C.§623)

21. An employer discriminates against his employees on account of age where

benefits are reduced in value the longer that an employee works for an employer the older he becomes. (Title 29 U.S.C., Sections 621, et seq.)

22. Where an employer pays an older employee substantially lower salary than a younger man who replaces him and also states that the older the plaintiff becomes and the longer he is employed the less his benefits will be, age discrimination in employment exists per se. (Title 29 U.S.C., Section 621, et seq.)

23. Any facts, documents or persons not full identified and whose home location and address have not been supplied should be excluded, if offered by the defendant for any reason, for failure to supply such information in discovery. (Federal Rules of Civil Procedure, Rules 26 through 27; NFL V. Metro. Hockey Club, 49 L.ed.2d 747;

Von Brimer v. Whirlpool, 536 F.2d 838)

24. Plaintiff contends that the district court has jurisdiction to enter a judgment against the defendant on all of the bases set forth the above.

25. When the plaintiff has made out the points set forth in contention of law no. 2 as the plaintiff asserts he has been able to do herein, the burden of proof and persuasion shifts to the defendant who must rebut the prima facie case of age discrimination in employment by establishing a legitimate non-discriminatory explanation for its conduct, that is, that it was not a mere pretext for age discrimination.

26. All pension plans, including the one to which Mr. Buss has belonged as an employee of Western Airlines, must be administered by an adminstrator who is wholly independent and separate from the employer.

Prudential Life Insurance Company has administered the plane to which the plaintiff belonged. Payments of any kind made by it are from an independent collateral source by law, under ERISA.

27. Laches is not a defense to an at law action. No statute of limitations bars the plaintiff from recovery herein. This action and all of the conciliation and notice of intent to sue prerequisites have been satisfied herein as a matter of law.

28. Plaintiff reserves the right to augment, amend and otherwise alter and add to this pretrial statement.

29. Plaintiff objects that the defendant has failed to supply him with necessary discovery, including particularly damages information necessary for him to have to present at trial.

30. Plaintiff estimates a trial length

of about 15 trial days.

31. Plaintiff contends that he did not at any time voluntarily retire.

32. Plaintiff contends that any issue concerning a trial which the defendant wishes to raise, although it has waived any such objections, and such issue raising is not appropriate therefore, should be included in the defendant's contentions of law.

33. Plaintiff contends that the defendant has failed to comply with orders it sought for the limitation of discovery through discovery scheduling after a showing of good cause only. Defendant was obligated to have filed any discovery schedule for any discovery sought on or about August 21, 1978. That time has long past. This serious delay of about two years and defendant's own failure to provide

discovery necessary for plaintiff to be able to present his case estops the defendant from seeking any further discovery, having failed to comply with the time limits it, itself, sought to impose upon the lititants herein. (Due Process of Law and Equal Protection of the Laws as guaranteed by the Fifth Amendment, U.S. Constitution)

34. Plaintiff contends that the defendant is limited in doing discovery on the opinions of experts and the bases for them to discovery it has already done and that its only right was to have propoun ded interrogatories under F.R.Civ.P., Rule 16(b), not to depose experts. Defendant did not comply with a time limit for iling a discovery schedule and has waived an opportunity to do any further discovery for any reason herein.

34. Defendant has raised issues not

presented as defenses in its responses to discovery, such as that the "normal retirement" date is uniformly enforced by Western Airlines; the plaintiff moves to strike this contention as untimely and as a surprise to the plaintiff.

DEFENDANT'S CONTENTIONS OF LAW

1. Plaintiff has the burden of proving the following facts in order to establish a prima facie case of age discrimination: (1) That he was within the protected age group; (2) that he was discharged against his will; (3) that he was satisfactorily performing the duries of his job; and (4) that he was replaced by a younger person not within the protected age group. Wilson v. Sealtest Foods, 501 F.2d 84 (5 Cir. 1974); Price v. Maryland Casualty Co., 561 F.2d 609 (5th Cir. 1976).

2. Once plaintiff has made a prima facie showing of age discrimination, defendant has the burden of rebutting the inference of discrimination by articulating a legitimate non-discriminatory motive for its treatment of plaintiff. If defendant makes this showing, plaintiff must then show that defendant's justification is a pretext for discriminatory action. Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978); Marshall v. Westinghouse Electric Corp., 582 F.2d 966 (5 Cir. 1978).

3. Plaintiff has the burden of proving that his age was a substantial and determinative factor and a determining factor in defendant's decision to terminate his employment. Laugeson v. Anaconda Co., 510 F.2d 307 (6 Cir. 1975)

4. Defendant's conduct with respect to plaintiff was reasonable and plaintiff

is not entitled to liquidated damages for a willful violation of the Act. The issue of willfulness is a question of law for the Court to determine. Rogers v. Exxon Research & Engineering Co., 404 F.Supp.324, (D.N.J. 1975), reversed on other grounds, 550 F.2d 854 (3 Cir. 1977).

5. Should plaintiff prove liability, he is entitled to damages of restitution in an amount equal to the wages and other benefits lost as a result of defendant's unlawful conduct. 29 U.S.C. §626(c).

6. Defendant is entitled to offset plaintiff's pension plan benefits received and other benefits against any recovery of lost wages or other benefits by plaintiff.

7. Plaintiff is not entitled to exemplary or punitive damages for a violation of the ADEA, even if such violation is deemed to be willful.

8. Plaintiff is not entitled to compensatory damages under the ADEA for psychological or emotional injury suffered as a result of defendant's violation of the ADEA.

9. Plaintiff is entitled to attorneys' fees, in the discretion of the Court, if a violation of the ADEA is shown to have been committed, which as resulted in damage to the plaintiff.

10. Defendant is entitled to assert ehe defense of laches in mitigation of plaintiff's claim for lost wages and other compensatory damages, for plaintiff's willful failure to diligently prosecute this action.

IX. OTHER MATTERS

A. At the specific request of the defendant, and over the plaintiff's objections

that these below listed contentions should be included in the pretrial statement of defendant's contentions of law and without the plaintiff's consent or approval in any way, the following is set forth:

1. The parties disagree as to the time estimated for trial.

Plaintiff estimates a trial length of at least approximately 15 trial days.

Defendant estimates six to eight trial days.

2. Defendant contemplates law and motion proceedings regarding plaintiff's witnesses listed for trial, and in particular, expert witnesses.

3. Defendant will seek further responses to its interrogatories to plaintiff, and also conduct discovery at plaintiff's experts and the basis for their opinions. Also defendant wants copies of all trial

exhibits and an opportunity to depose witnesses not identified in plaintiff's discovery responses.

4. Defendant contests plaintiff's right to a jury trial on all of the issues listed herein, and relies on Lorillard v. Pons, 434 U.S. 575 (1978) to guide this Court.

B. Plaintiff's Objections and Reservations to the Above Statements of Defendant:

1. Plaintiff is still awaiting the receipt of information on the issues of damages from the defendant, which information was ordered by this Court in an order dated August 17, 1978, and promised by the defendant, in full, in lieu of formal depositions pursuant to F.R.Civ.P., Rule 30(b)(6) and anticipates that this information will result in further clarification of the damages contentions presented

herein and may, depending on the contents thereof, modify same. If any modification is occasioned by the contents of the information to be supplied by the defendant the Court will be apprised of same.

By way of a hand-written document communicated to plaintiff's counsel at August 6, 1980 meeting concerning the pretrial conference statement and after plaintiff's proposed pretrial conference statement was lodged with the Court, the defendant has indicated that it intends to seek further responses to unidentified interrogatories of defendant apparently propounded to plaintiff, that defendant wishes to conduct unspecified discovery with respect to plaintiff's experts and the bases for their opinions and that defendant wants copies (apparently at plaintiff's expense) of all trial exhibits which have

been shown to defendant pursuant to Local Rule 9. Defendant has also indicated that it wishes to have the opportunity to depose unspecified witnesses on unspecified dates whose identities have not previously be disclosed and particularly in conformity with a discovery schedule.

Plaintiff objects to each of defendant's requests aforementioned as being contrary to the provisions of Federal Rules of Civil Procedure, Rule 16 and on the further grounds that the requests are untimely, and highly prejudcal to plaintiff.

With respect to any discovery concerning plaintiff's experts and the bases for their opinions, plaintiff's counsel and defendant's counsel have stipulated that the defendant will be provided with the computations of plaintiff's experts once information upon which computations

could be made have been supplied by the defendant fully and completely. Although defendant's attorneys agreed to supply said information well in advance of the pretrial conference date they have not done so. Nonetheless, in the spirit of mutual disclosure of information plaintiffs remain ready and willing to abide by the agreement to provide calculations within about a week, once the defendant has fully and completely complied with its obligations to disclose the damages discovery.

However, the plaintiff objects to any further discovery by the defendant, and particularly objects that the defendant is seeking discovery beyond the time limits it sought itself and beyond F.R.Civ.P., Rule 26.

Plaintiff seeks to take a continued deposition of Robert Vincent Johnson con-

cerning a hotly disputed note and whether a copy of a note produced since he identified the existence of one is indeed the note he described in that deposition. Plaintiff contemplates further discovery on damages as he deems necessary and proper as damages information is supplied to him by the defendant. If plaintiff's petition for a writ is granted or there is a change in the rulings on discovery herein, in addition plaintiff wishes to continue pursuant discovery sought. Plaintiff may wish to depose Bruce Wallace, a belatedly identified Rule 30(b)(6) witness. Plaintiff may wish to add to his list of witnesses based on the above discovery, and reserves the right to do so.

X. CLOSING PARAGRAPH

The foregoing statements having

been presented by the plaintiff, and the foregoing issues of law and fact having been specified by the plaintiff as remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial herein. The plaintiff is entitled to modify the foregoing as he deems necessary and proper.

IT IS SO ORDERE.

Dated:

_____
U.S. DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT by

Plaintiff Robert A. Buss.

Dated: August 7, 1980 (with reservations JCL)

/s/
Joan Celia Lavine
JOAN CELIA LAVINE, Attorney for
Plaintiff Robert A. Buss

APPROVED AS TO FORM AND CONTENT by Defendant Western Airlines, Inc., a corporation.

Dated: August 7, 1980

DARLING, HALL, RAE AND GUTE
PAUL L. GIANNINI
Attorneys for Western Airlines, Inc.

By: _____
PAUL L. GIANNINI

EXHIBIT "A"

ROBERT A BUSS V. WESTERN AIRLINES, INC.,
Case No. CV-77-142-TJH

EXHIBIT LIST OF PLAINTIFF

Description	Date Marked	Date Admitted	Objections
1. Letter stating Mr. Buss would retire as of October 17, 1975, signed by Robert V. Johnson (no date)			Hearsay, relevance, Rules 403, 703, 704, 801, not produced in discovery
2. Letter praising Mr. Buss's performance, signed by Anton Favero, senior vice president of Western Airlines, dated October 21, 1975			Hearsay, relevance, Rules 403, 703, 704, 801, not produced in discovery
3. Files and records of the U.S. Department of Labor concerning age discrimination complaint of Mr. Buss and investigation of same, finding Mr. Buss had been discriminated against on account of his age by Western Airlines			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objections
4. Files and records and documents of the California Department of Employment Development Department concerning October 17, 1975 discharge and comp.			Hearsay, relevance Rules 403, 703, 704, 801, not produced in discovery
5. Payroll records of William Morrison			Hearsay, relevance Rules 403, 703, 704, 801, not produced in discovery.
6. Payroll sheet prepared by Pauline Davis showing Mr. Morrison's gross salary and per diem starting in 1974 (undated)			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
7. General administrative manual of Western Airlines for 1973			Hearsay, relevance, Rules 403, 703, 704, 801, not provided in discovery.
8. General administrative manual of Western Airlines for 1974.			Hearsay, relevance, Rules 403, 703, 704, 801, not produced in discovery.
9. General administrative manual of Western Airlines for 1975.			Hearsay, relevance, Rules 403, 703, 704, 801, not produced in discovery.

Description	Date Marked	Date Admitted	Objections
10. General administrative manual of Western Airlines for 1976.			Hearsay, relevance, Rules 403, 703, 704, 801, not produced in discovery.
11. General administrative manual of Western Airlines for 1977.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.
12. General administrative manual of Western Airlines for 1978.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
13. General administrative manual of Western Airlines for 1979.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
14. General administrative manual of Western Airlines for 1980.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
15. Confidential memorandum concerning furlough policies of Western Airlines, dated 8/24/74.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objections
16. A copy of a note dated September 15, 1975, initialed purportedly by Anton Favero.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.
17. The original note dated September 15, 1975, initialed purportedly by Anton Favero.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.
18. The original and copies of note, dated September 16, 1975 initialed by Anton Favero and sent to Robert V. Johnson telling Mr. Johnson to "retire" Mr. Buss.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.
19. The personnel files of Robert A. Buss of Western Airlines.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.
20. The yearly, annual shareholder's reports published by Western Airlines from the year 1973 to the present time of the trial.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objections
21. The quarterly statements prepared by Western Airlines for its shareholders and published.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
22. The depositions of Robert A. Buss taken herein and the attachments thereto.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
23. The depositions of Arthur Kelly, taken August 17, 1978 herein.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
24. Checks disbursing funds from annuity and pension plan, starting in May, 1976, by Prudential Life Insurance Company to Robert A. Buss.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
25. Pension and retirement plan to which William Morrision has belonged between November 10, 1975 and date of trial.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objections
26. Pension plan folders and statements as to non-bargaining employees of Western Airlines, which applies to Robert A. Buss			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
27. The deposition of Robert J. Schnitzer, taken August 14, 1978.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
28. The deposition of Robert V. Johnson taken May 31, 1978.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
29. The deposition of of Anton Ben Favero, taken June 1, 1978.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
30. Western Airlines articles of incorporation or corporate charter.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery
31. Western Airlines by-laws			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objections
32. Western Airlines corporate minutes, executive committee, shareholder and board of directors from 1970 to the present time.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
33. The files and records of Buss v. Western Airlines, U.S.D.C. (C.D.Cal.) CV-77-124			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
34. The files and records of Buss v. U.S.D.C. (C.D.CAL.) U.S.C.A. (9th Cir.) 78-3174			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
35. Files and records of Western Airlines v. Union Oil Co., U.S.D.C. (C.D.Cal.)CV-75-1351-JWC and particularly the complaint and interrogatories and responses to same.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
36. Employee's Annual Statement concerning Retirement Income Plan for years 1971 through present time.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objection
37. Document production, pursuant to response filed herein on August 29, 1977.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
38. Computor print-outs of Robert'Buss's pension plan information from December 12, 1975 print-out			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
39. Prudential Notice to Recipients of Taxable Lump Sum Distributions, etc.			Hearsay,relevance, Rules 403, 703, 704, 801 not produced in discovery
40. Letter dated February 1, 1976 from Prudential to Robert A. Buss concerning annuity.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
41. Prudential letter, dated May 5, 1976, to Robert A. Buss showing return of employee contributions ($17,469.39)			Hearsay,relevance, Rules 403, 703, 704, 801 not produced in discovery
42, Los Angeles Magazine, September, 1977 article "Down to Basics", by Tom Link, starting page 110.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objection
43. SEC Westen Airlines filing, Form S-7, August 10, 1977.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
44. Quarterly Shareholder statements since 1973 of Western Airlines.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery
45. January 28, 1977 article, Valley News, "Western will buy 7 jetliners.			Hearsay, relevance, Rules 403 703, 704, 801 not produced in discovery.
46. Forbes, October 15, 1976, article "Alone in the Cockpit", page 63.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery
47. Letter, dated January 23, 1976, to Robert A. Buss from Bruce Wallace.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
48. Summary Annual Report for the Plan Year August 1, 1975 to July 31, 1976 of Westenr Airlines Group Insurance plan, etc.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery
49. Copies of pilot's license of Robert A. Buss.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Discovery	Date Marked	Date Admitted	Objections
50. Letter of May 25, 1973, re New Minimum Retirement Income and 1972 Annual Statement			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
51. Letter of Brig Whittaker, undated			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
52. Interoffice Correspondence to Robert A. Buss dated 8-30-74 re retirement income plan from Pat Ryan			Hearsay, relevance, Rules 403, 703,704, 801 not produced in discovery
53. Letter of September 3, 1974 re Annual Statement for Management, Administrative and Technical Employees from Dan Zaich.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
54. Letter of January 27, 1975 to all management and administrative & Technical employees from Dominic Renda.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
55. Letter of May 25, 1976 to participants in Western Airlines Retirement Income Plans, etc.			Hearsay, relevance, Rules 403 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objection
56. Receipt, dated May 16, 1978 from Paul L. Giannini in regards to the items number 50 through 55.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
57. May, 1980 edition of newspaper, Flight Times, published by Western Airlines.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
58. March, 1976 Flight Times			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

EXHIBIT "B"

LIST OF EXHIBITS OF DEFENDANT, WESTERN AIR LINES, INC.

EXHIBIT	Plaintiff's Objections	DESCRIPTION
A	not shown to P., irrelevant to successor based damages and as of time of discharge; no foundation; not complete documentation of plans of Western Airlines. (Rules of Evid., Rule 106)	Western Air Lines Retirement Income Plan for Non-Bargaining Employees, as amended through February 1, 1976.
B	same objection as Ex. "A"; haarsay not best evidence, no foundation, incompetent, no qualified opinion, irrelevant; P. entitled to access to all of documentation	Summary of Western Furloughs and Discharges of Los Angeles Management Employees, May 1, 1974 - December 31, 1977.
C	same objections as to Exs. A and B	Summary of Western Furloughs and Discharges at Flight Ground School Employees, May 1, 1974 - December 31, 1977.
D	same objection as to Exs. "A" and "B"	Memoranda regarding merit increases for Western Management Employees, 1975, 1976, 1977 and 1978 (Rebuttal only).

EXHIBIT	Plaintiff's Objections	DESCRIPTION
E	irrelevant, incompetent, not qualified to testify as expert (Schnitzer); as objections as to Exs. A. and B.	Calculation of Age 65 Retirement Benefits for Robert Buss and Present Value of Early and normal Retirement Benefits, as prepared by Robert Schnitzer (Rebuttal)
F	Same objections as Exs. A,B and E	Western Air Lines Summary of Fuel and Labor Costs, 1975 versus 1974.
G	Same objections as Exs. A,B and E	Information Reports furnished by Western to Air Transport Association, Economics and Finance Department, Summary of Employees on payroll, Furlough, Aircraft removed from service, for 1974-75.
H	Sam objections as Exs. A,B and E	Interoffice Memorandum, January 28, 1975, A. B. Favero to R.V. Johnson.
I	Same objections as Exs. A,B and E.	Memorandum, June 27, 1974, R.A. Buss to A.B. Favero (2 pages).
J	am not sure whether this was shown to same objections as Exs. A,B, and E	Memorandum, June 13, 1974, R. A. Buss to A. B. Favero.

EXHIBIT	Plaintiff's Objections	DESCRIPTION
K	Same objections as Exs. A,B and E	Application for Early Retirement Benefits, R. A. Buss, February 1, 1976.
L	Same objections as Exs. A,B and E	Selection of forms of Pension Benefits, R.A. Buss, January 266, 1976, Retirement Inc. Plan.
M	Same objections as A,B, and E, Exs. above	Selection of Optional Variable Contributions, R. A. Buss, January 26, 1976 Retirement Inc. Plan.
N	Same objections as Exs. A,B, and E	Prudential Insurance Co., Notice of Retirement Status, R. A. Buss, January 26, 1976.
O	Same objections as Exs. A,B, and E.	Letter, may 5, 1976, David L. Kostenbader to R. A. Buss, with enclosure.
P	cannot identify, therefore objections as in Exs. A,B, and E	Organization Chart, June 1, 1974 - Western Air Lines Pilot Ground School.
Q	hearsay, irrelevant	Plaintiff's Response to Defendant's Interrogatories, Response No. 2, dated August 28, 1975.

EXHIBIT	Plaintiff's Objections	DESCRIPTION
R	Same objections as Exs. A,B, and E	Western Payroll Notice, Form G-16, for Robert A. Buss, October 9, 1975.
S	am not sure whether this is what Mr. Buss has shown as furlough procedure	Memorandum to Corporate Officers, dated August 28, 1974, from Thomas E. Hall, Furlough procedure (4 pages).
T	Same objections as Exs. A,B, and E	Western Payroll Notice, Form G-16, for Robert Buss, dated April 16, 1976.
U	Same objections as Exs. A,B, and E.	Organization Chart, Western Pilot Ground School, January 1, 1976.
V	Same objections as Exs. A, B, and E vague and unclear	Flight Operations Manual, Western Air Lines, Duties of Director, Flight Operations Training.
W	Same objections as Exs., A,B and E. am not sure whether this is a document prepared by Mr. Buss	Ground School Instructors Utilization Chart Summary, January-December, 1974.

EXHIBIT	Plaintiff's Objections	DESCRIPTION
X	irrelevant and incomplete; same objections as Exs. A,B, and E	Western General Administrative Manuarl (GAM), March 1, 1977, Page 55.
Y	Same objections as Exs A,B,E and X	Western GAM, June 1, 1976, Page 51.
Z	Same objections as Exs. A,B,E and X	Western GAM, June 16, 1975, Page 51.
AA	Same objections as Exs. A,B,E, and X	Western GAM, February 1, 1972, Page 15. Organization Chart, Flight Operations.
BB	hearsay, irrelevant, not best evidence conclusionary, not properly qualified to express expert opinions hearsay on hearsay; same objections as Exs. A,B, and E, and X	Western Air Lines, Annual Report, 1976

APPENDIX L

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HON. TERRY J. HATTER, JR., JUDGE PRESIDING

ROBERT A. BUSS, PLAINTIFF, vs. WESTERN AIRLINES, DEFENDANT.	)	CV 77-124-TJH

REPORTER'S TRANSCRIPT

OR PROCEEDINGS

DATE: MONDAY, AUGUST 11, 1980

PLACE: LOS ANGELES, CALIFORNIA

PATRICIA FERRIER
OFFICIAL REPORTER
312 N. SPRING STREET
LOS ANGELES, CA 90012
(213) 628-8423

APPEARANCES:

FOR THE PLAINTIFF:

JOAN LAVINE
ATTORNEY AT LAW

FOR THE DEFENDANT

PAUL, RAE & GUTE
BY: PAUL GIANNINI
ATTORNEY AT LAW

ALSO PRESENT:

MARK ROBINSON
ATTORNEY AT LAW

MONDAY, AUGUST 11, 1980, LOS ANGELES, CALIFORNIA 10:25 A.M.

THE CLERK: ITEM TWO CIVIL ACTION, 77-124, BUSS VERSUS WESTER AIRLINES.

COUNSEL, PLEASE MAKE YOUR APPEARANCES.

MS. LAVINE: GOOD MORNING, YOUR HONOR, JOAN LAVINE APPEARING ON BEHALF OF THE PLAINTIFF.

AND MAY I INTRODUCE TO YOUR HONOR MARK ROBINSON--

THE COURT: YES.

MS. LAVINE: -- ON BEHALF OF THE PLAIN_ TIFF.

THE COURT: MR. ROBINSON.

MR. GIANNINI: GOOD MORNING, YOUR HONOR.

PAUL GIANNINI OF DARLING, PAUL, RAE AND GUTE FOR DEFENDANT.

MS. LAVINE: MAY I INDICATE FOR THE RECORD, YOUR HONOR, THAT MR. BUSS IS SENT IN COURT ALSO.

THE COURT: YES.

MS. LAVINE: MR. ROBINSON WILL BE SUBSTITUTING INFORMALLY.

WE ARE JUST EXECUTING THE FORMS HERE IN COURT.

THE COURT: YES, I UNDERSTAND THAT.

MS. ROBINSON: THANK YOU, YOUR HONOR.

THE COURT: YES.

THANK YOU, MR. ROBINSON.

THE COURT: MR. GIANNINI, I HAVE RECEIVED YOUR AFFIDAVIT FILED TODAY.

I BELIEVE IT VERY WELL MAY BE MOOTED WITH MR. ROBINSON COMING INTO THE MATTER.

MR. GIANNINI: I WOULD LIKE TO HEAR FROM MR. ROBINSON ON THAT, YOUR HONOR.

IF HE IS GOING TO BE TRIAL COUNSEL THEN I PROPOSE THAT WE MEET AS SOON AS POSSIBLE AND GET THIS PRETRIAL ORDER.

THE COURT: ALL RIGHT.

MR. ROBINSON, WHAT ABOUT THAT?

MR. ROBINSON: YOUR HONOR, I HAVE JUST HAD ABOUT THREE DAYS TO FAMILIARIZE MYSELF WITH THIS FILE.

AND IT'S MY JUDGMENT FROM LOOKING AT THE FILE THAT THERE ARE A NUMBER OF LOOSE ENDS THAT OUGHT TO BE TIED BEFORE WE SIGN A PRETRIAL STATEMENT.

AS I UNDERSTAND MR. GIANNINI'S POSITION.

HE WANTS TO BE ABLE TO HAVE A FINAL ORDER THAT CUTS OFF DISCOVERY AND GETS US IN A POSITION WHERE WE GO IMMEDIATELY TO TRIAL.

I HAVE NO OBJECTION TO THAT PROCEDURE, BUT I THINK THAT IN ORDER TO AVOID PREJUDICE TO EITHER SIDE THAT WE OUGHT TO TIE THE LOOSE ENDS FIRST.

MY SUGGESTION WOULD BE THAT IF YOU WOULD DO AS YOU DID IN THE LAST CASE, HAVE

ANOTHER STATUS CONFERENCE ABOUT NINETY DAYS FROM TODAY, I WILL MAKE EVERY EFFORT TO DO ALL THE DISCOVERY THAT I THINK IS NECESSARY TO GET THE CASE READY FOR TRIAL.

THE COURT: ALL RIGHT.

MR. GIANNINI, YOU HAVE HEARD FROM MR. ROBINSON.

MR. GIANNINI: WELL, I HAVEN'T SEEN THE SUBSTITUTION PAPERS, YOUR HONOR, BUT I ASSUME MR. ROBINSON IS SUBSTITUTING IN PLACE OF MS. LAVINE, AND --

THE COURT: THAT IS RIGHT.

MR. GIANNINI: - AND I UNDERSTAND HE IS, OBVIOUSLY, GOING TO HAVE TO UNDERTAKE QUITE A SUBSTANTIAL REVIEW.

THE COURT: YES.

MR. GIANNINI: CLEARLY, OUR POSITION ON DISCOVERY IS THAT THERE HAS BEEN A CUT-OFF, SO I WOULD LIKE TO GIVE HIM AN OPPORTUNITY TO GET HIMSELF FAMILIAR WITH THE

CASE BEFORE WE MEET.

BUT I QUESTION WHETHER NINETY DAYS IS REALLY NECESSARY, SINCE IT SEEMS TO ME THAT WE ARE FAIRLY CLOSE TO GETTING A PRE-TRIAL ORDER TOGETHER, MS. LAVINE AND I --

THE COURT: PERHAPS YOU ARE BEING MORE THAN HOPEFUL WITH THOSE REMARKS.

MR. ROBINSON: YOUR HONOR, I JUST WOULD LIKE TO MAKE ONE CORRECTION.

I AM NOT SUBSTITUTING IN PLACE OF MS. LAVINE.

I AM SUBSTITUTING AS CO-COUNSEL. I WILL BE LEAD COUNSEL.

MS. LAVINE WILL STILL BE IN THE PROCEEDING.

THE COURT: OH. I SEE.

MR. GIANNINI: IN THAT CASE, YOUR HONOR, THEN I WOULD THINK NINETY DAYS WOULD BE UNNECESSARY AND THAT --

THE COURT: YES, I WOULD AGREE ON THAT BASIS, ACTUALLY, I WOULD NOT HAVE WANTED TO ALLOW NINETY DAYS, EVEN IF MR. ROBINSON WERE COMING IN AND TAKING OVER THE MATTER COMPLETELY.

BUT WITH YOUR COMING IN AS LEAD COUNSEL, MS. LAVINE REMAINING IN THE CASE, IT SEEMS TO ME THAT WHAT WE SHOULD DO IS SET THIS FOR THE PRETRIAL CONFERENCE.

AND LET'S SAY THIRTY DAYS.

MS. LAVINE: YOUR HONOR, MAY I JUST SPEAK TO THAT POINT?

THE COURT: SURELY.

MS. LAVINE: THERE ARE A NUMBER OF ITEMS WHERE ORDERS OF THIS COURT AND OF THE MAGISTRATE THAT I HAVE SEEN HAVE BEEN MADE TO THE DEFENDANTS, TO PRODUCE CERTAIN TYPES OF INFORMATION, PARTICULARLY, LET'S SAY, COMPUTATIONS THAT ARE NECESSARY FOR OUR EXPERTS TO REVIEW IN ORDER TO COME UP

WITH SOME TYPE OF A FIGURE ON DAMAGES.

IN ADDITION, THERE ARE MATTERS WHICH INVOLVE THE QUESTION OF A DISCRIMINATORY PATTERN, WHICH WE ARE ENTITLED TO UNDER THE GREEN CASE, AND THEY HAVE NOT PRODUCED THAT TYPE OF INFORMATION.

FOR INSTANCE, THEY WILL GIVE US THE FIRST INITIAL, AND A LAST NAME OF A PARTICULAR PERSON, NO ADDRESS, NO WAY POSSIBLE OF INTERVIEWING THAT PERSON.

SO THE RESULT WOULD BE THAT WE WOULD HAVE TO TAKE A MILLION DEPUTIES WHICH WOULD BE PROHIBITIVELY EXPENSIVE, AND WE COULDN'T POSSIBLY DO IT WITHIN THIRTY DAYS.

I WOULD LIKE TO, IF THE COURT WOULD, DO THIS:

IF YOU WOULD SET A NEW STATUS CONFERENCE FOR THIRTY DAYS AND GIVE ME A CHANCE TO SEE EXACTLY WHAT TYPE OF COOPERATION WE ARE GOING TO GET FROM WESTERN AIRLINES, I

THEN MIGHT BE IN A POSITION TO SAY THAT ON A SPECIFIC DATE WE CAN SIGN A PRETRIAL ORDER.

BUT IT'S OBVIOUS TO ME THAT FOR THE PERSON WHO HAS THE BURDEN OF PROOF, BEING THE PLAINTIFF HERE, IT IS PROHIBITIVE FROM ETTING CERTAIN TYPES OF INFORMATION.

IT WOULD BE PREJUDICIAL, IN MY JUDGMENT, TO CUT OFF THAT RIGHT.

AND THAT IS ALL I AM ASKING FOR IS THAT WE COME BACK HERE THIRTY DAYS FROM NOW AND LET'S JUST SEE WHERE OUR PROBLEMS ARE.

AND THERE MAY BE NONE. MAYBE MR. GIANNINI IS GOING TO BE VERY COOPERATIVE.

THE COURT: ALL RIGHT. WELL, I WOULD CERTAINLY HOPE, MR. ROBINSON -- I WANT TO BE FAIR TO ALL PARTIES HERE, THAT WE COULD WORK OUT SOMETHING IN THIRTY DAYS.

AND I WILL TELL YOU, THOUGH, VERY FRANKLY, WE HAVE BEEN THROUGH THE MILL WITH THIS CASE, AND JUDGE WATERS HAS HAD IT PRIOR TO ME AND THE EXPERIENCE HAS BEEN PRETTY SIMILAR.

WHAT I AM GOING TO DO IS SET IT FOR A STATUS CONFERENCE IN THRITY DAYS WITH A -- WELL, I THINK, THEN, WITH A PRE-TRIAL CONFERENCE TO FOLLOW WITHIN ANOTHER THIRTY DAYS OR THE MATTER WILL BE DISMISSED; ONE OR THE OTHER WILL HAPPEN IN THIRTY DAYS.

MS. LAVINE: YOUR --

MR. ROBINSON: YOUR HONOR, I TAKE IT THAT IS SUBJECT TO YOUR REVIEW ON THE THIRTY DAY --

THE COURT: THAT IS RIGHT.

MR. ROBINSON: BECAUSE IT MAY BE THAT WE WILL BE ABLE TO SHOW YOU THAT WE ARE NOT AS DILATORY AS YOU THINK WE ARE.

THE COURT: I AM BERY HOPEFUL OF THAT, MR. ROBINSON.

ALL RIGHT. LET'S DO IT THAT WAY, THEN.

THIRTY DAYS FOR A STATUS CONFERENCE AND WITH CLEAR UNDERSTANDING THAT IT EITHER WILL THEN BE SET VERY SHORTLY FOR A PRETRIAL CONFERENCE, WITHIN ANOTHER THIRTY DAYS, OR IT WILL BE DISMISSED, DEPENDING ON JUST WHAT IS SHOWN AT THIS THIRTY DAY CONFERENCE.

MS. LAVINE: THANK YOU VERY MUCH, YOUR HONOR.

MR. GIANNINI: THANK YOU.

THE COURT: WHAT DATE?

THE CLERK: STATUS CONFERENCE FOR SEPTEMBER 22 AT 10 A.M. AND PRETRIAL AT 10-27 AT 10 A.M.

THE COURT: ALL RIGHT.

THANK YOU MS. LAVINE AND MR. GIANNINI.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

No. CV-124-TJH Date Aug. 11, 1980

Buss vs Western Airlines

DOCKET ENTRY

PRESENT:

HON. TERRY J. HATTER, JR. JUDGE

Florence Kato	Patricia Ferrier
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
Joan Celia Lavine Mark Robinson	Paul Giannini

PROCEEDINGS: PRE TRIAL CONFERENCE

Pltf's counsel state that Mark Robinson will be coming in as lead counsel.

Pltf moves for continuance to PTC. Arguments heard.

Status conference set for 9/22/80 at 10:00 a.m. PTC cont'd to 10/27/80 at 10:00 a.m.

Pltf to be ready for PTC on 10/27 or action will be dismissed unless good cause is shown.

APPENDIX M

DARLING, HALL, RAE & GUTE
409 Pacific Mutual Building
523 West Sixth Street
Los Angeles, California 90014
627-8104

Attorneys for Defendant,
Western Air Lines, Inc.

FILED
AUG 11 1980
CLERK, U.S.
DISTRICT
COURT
CENTRAL DISTRICT
OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT A. BUSS, Plaintiff, v. WESTERN AIR LINES, INC., Defendant.	NO. CV-77-124-TJH(Kx) AFFIDAVIT OF PAUL L. GIANNINI

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

PAUL L. GIANNINI, having been duly sworn, deposes and says:

1. I am an attorney at law, licensed to practice before the Courts of the State of California and an associate in the law

firm of Darling, Hall, Rae & Gute, attorneys of record for defendant, Western Air Lines, Inc., in the above-entitled action.

2. On or about Monday, August 4, 1980, I met with Ms. Joan Lavine and discussed the proposed Pre-Trial Conference Order. This meeting lasted approximately one (1) hour. It was agreed at that time that Ms. Lavine would furnish me with a proposed Order for my review.

3. On Tuesday, August 5, 1980, I telephoned Ms. Lavine and told her it would not be possible to meet that day because I was engaged in deposition in the case of Equal Employment Opportunity Commission v. Western Air Lines, Inc. We arranged a meeting for the following day.

4. On Wednesday, August 6, 1980, Ms. Lavine, her law clerk and myself met for

approximately one and one-half (1-1/2) hours in my office and again discussed the Pre-Trial Conference Order. At this time, I advised Ms. Lavine of my objections to plaintiff's exhibits, and we also agreed upon certain admitted facts. I then had defendant's Contentions of Fact and Law that remained in dispute retyped. My office then contacted Ms. Lavine at approximately 3:37 p.m. that day and told her the retyped Contentions were ready for her review.

5. Sometime during the morning of Thursday, August 7, 1980, this office received the proposed Pre-Trial Statement that is attached as Exhibit "A". Upon my review of that document, I noticed immediately on Page 37 that Ms. Lavine was going to sign the Stipulation "with reservations". I also noted numerous references in the Stipulation of plaintiff's right to augment,

revise, or alter the Pre-Trial Statement; plaintiff also apparently reserved the right to add further exhibits and witnesses.

6. I immediately called Ms. Lavine by telephone and stated that I would not stipulate to the proposed Order in this form. She indicated that she would reconsider her proposed signature "with reservations" and would call me back. This was on Thursday, August 7, 1980.

7. Since that time, I have received only a written communication from Ms. Lavine dated Friday, August 8, 1980, stating that she intends to have the Court sign the Order over my objection.

If called upon to testify to the foregoing statements of fact as true and correct, I would be competent to so testify and certify under penalty of perjury that they are true and correct, except as to those matters based upon information and belief, and as to those matters I believe them to be true.

Executed on (August 8), 1980, at Los Angeles, California.

/s/
PAUL L. GIANNINI

Subscribed and sworn to before me this (8th) day of August, 1980

(SEAL)

/s/
Notary Public in and for the
State of California

APPENDIX N

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CV 77-124-TJH Date Aug. 11, 1980

Buss v. Western Airlines

Docket Entry

PRESENT:

HON. TERRY J. HATTER, JR. JUDGE

Florence Kato	Patricia Ferrier
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
Joan Celia Lavine Mark Robinson	Paul Giannini

PROCEEDINGS: PRE TRIAL CONFERENCE

Pltf's counsel state that Mark Robinson will be coming in as lead counsel.

Pltf moves for continuance of PTC.

Arguments heard.

Status conference set for 9/22/80 at 10:00 a.m. PTC cont'd to 10/27/80 at 10:00 a.m.

Pltf to be ready for PTC on 10/27 or action will be dismissed unless good cause is shown.

Initials of Deputy Clerk /s/_____

APPENDIX O

DATE FILED
SEPT. 12, 1980

JOAN CELIA LAVINE
304 South Broadway, Suite 408
Los Angeles, California 90013
Telephone: (213)627-3241

MORRIS LAVINE
304 South Broadway, Suite 408
Los Angeles, California 90013
Telephone: (213)627-3241

MARK ROBINSON, SR.
888 West Sixth Street, 3rd Floor
Los Angeles, California 90017
Telephone: (213)680-4400

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT A. BUSS, Plaintiff, vs. WESTERN AIRLINES, INC., a corporation, Defendant.	) CASE NO. CV-77-124-TJH-(Kx))) NOTICE OF MOTION TO SCHEDULE FURTHER DISCOVERY AND MOTION THEREON; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF DR. RAYMOND SCHULTZ (9-29-80; 2:00 p.m.; Mag. Kronenberg)

TO THE DEFENDANT WESTERN AIRLINES, INC.

AND TO ATTORNEYS DARLING, HALL, RAE AND

GUTE AND MR. PAUL L. GIANNINI:

PLEASE TAKE NOTICE that on September 29, 1980 at the hour of 2:00 p.m. or as soon thereafter as said matter can be heard in the courtroom the Honorable John Kronenberg, U.S. Magistrate presiding, located at 312 North Spring Street, 10th Floor, Los Angeles, California, the plaintiff will move, as required by court order, for an order scheduling further discovery herein.

Said motion will be based on the files and records herein, the motion attached hereto, the Response to Orders of December 14, 1979 and December 20, 1979 of Hon. Laughlin E. Waters, filed February 20, 1980 and the List of Items and Issues in Discovery Motions, etc., filed March 24, 1980, the right to discovery herein pursuant to Hickman v. Taylor, 320 US 451 and Federal Rules of Civil Procedure, Rules 26 through 37 and the Federal Magistrates Acts of 1979

as contained in Title 28 U.S.C., Section 636 and the provisions of Title 28 U.S.C., Section 753, as well as due process of law as guaranteed by the Fifth, Sixth and Seventh Amendments, U.S. Constitution.

The Court and counsel are advised that the plaintiff may move to advance the hearing date herein.

Dated: September 12, 1980

Respectfully submitted,

By: Joan Celia Lavine
JOAN CELIA LAVINE and
MORRIS LAVINE, Attorneys for Plaintiff
Robert A. Buss

MOTION TO SCHEDULE FURTHER DISCOVERY

Comes not the plaintiff Robert A. Buss and moves this Honorable Court for an order scheduling further discovery herein, to-wit:

1. Plaintiff incorporates herein by reference those items of discovery contained in his Response to the Orders of Judge Waters, filed herein on February 20, 1980 and his List of Items and Issue in Discovery, etc., filed March 24, 1980 herein.

2. In addition the plaintiff seeks production of the following items, to-wit:

a) Any and all payroll records, whether or not computorized, of William Morrison and Richard McDonald who have been identified by the defendant as the successors of the plaintiff Robert A. Buss.

b) Any and all campaign contribution records of Western Airlines to any

candidate for public office since 1972, and including those made by or through any of its corporate officers, agents, directors, or management personnel, and particularly those made to Alan Cranston (presently a U.S. Senator) and Tom Bradley, (presently mayor the the City of Los Angeles).

c) The person identified as Bruce Wallace, with the costs and expenses of said deposition being sustained and paid for in advance of any deposition at least ten days before said deposition is set to include the court reporter costs and reasonable attorneys' fees paid to the counsel for the plaintiff.

Said motion is based on the files and records herein, this motion and the notice of motion attached hereto and incorporated

herein and a copy of the declaration of Dr. Raymond Schultz, attached hereto and incorporated herein by reference as though fully set forth, and the memorandum of points and authorities attached.

The defendant has attempted to avoid its responsibility to provide the plaintiff with damages discovery by providing a summary of wages for various time periods for Mr. Morrison and Mr. McDonald and has recently presented copies of what it claims are personnel files. This leaves the plaintiff without primary source data from which to compute his damages and leaves him without fringe benefits data from which his expert can compute his damages herein.

Plinatiff seeks an aware of the cost and expenses of his expert Dr. Schultz in having to take his time to repeat damages computations due to the incomplete discovery

from the defendant, and estimates that his added expenses will be approximately between $500 and $1000 due to the failure of the defendant to provide him with prompt, meaningful discovery. Plaintiff also seeks attorneys' fees for this motion being made and costs and expenses, which are reasonable and compensatory.

Dated: September 12, 1980

Respectfully submitted,

Joan Celia Lavine
JOAN CELIA LAVINE,
Attorney for Plaintiff
Robert A. Buss

DECLARATION OF DR. RAYMOND SCHULTZ, PH.D.

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

Dr. Raymond Schultz, Ph.D., economic consultant, makes the following declaration under penalty of perjury

I am and have been at all times mentioned herein an economist and actuary, with my principal place of business being located at 707 Wilshire Blvd., Suite 860, Los Angeles, California. I have been retained by Robert A. Buss for the purpose of providing expert advise and expert testimony inthe case of Robert A. Buss v. Western Airlines, Inc., U.S.D.C. (C.D. Cal.) Case No. CV-77-124-TJH(Kx).

Is is essential that I have the full and complete payroll records of the successors of Robert A. Buss in his last position with Western Airlines in order to

provide expert advise in the above entitled matter on the damages to Mr. Buss. I have been supplied with a copy of a summary of yearly gross amounts for the years 1974, 1975, 1976, 1977 and 1978. I have not been provided with any data at all for the year 1979 or the year 1980. I am informed by Mr. Buss's attorney, Joan Celia Lavine, and believe and on that basis set forth that the sum set forth for the year 1978 is for a portion of that year since the sheet involved was provided to her approximately during mid-1978. A true and correct copy of that partial summary referred to herein is attached hereto, incorporated herein by reference and marked Exhibit "A", bein the payroll data concerning W. J. Morrison.

It is also essential that I obtain itemized information as to the gross salary

of any successor to Mr. Buss for the purpose of providing expert economic advise and testimony. I have been advised that Mr. Morrison is a pilot. If the defendant contends that any aspect of Mr. Morrison's status as a pilot should affect the damages, it is then essential to have a complete payroll and employment records breakdown.

The payroll summary, as contained in Exhibit "A" attached hereto, omits any showing of fringe benefits, such as pension plans, insurance for health or dental programs, investment plans available or participated in, death benefits or retirement benefits. These are all essential for me to have as well as any other fringe benefits containing an itemized breakdown.

I have testified in federal court proceedings as an expert in the area of economics and actuarial information approximately

forty to fifty times, my qualifications having been duly shown.

If called upon and sworn to testify to the foregoing statement of facts, I would be competent to so testify and certify under penalty of perjury that the foregoing is true and correct, except as to those matters based on information and belief and of which I have been advised, and as to those matters, I believe them to be true.

Executed July 18, 1980 at Los Angeles, California.

/s/

Raymond Schultz

RAYMOND SCHULTZ, PH.D.,
Economist and Actuary,
and Declarant

(W.J. Morrison)

(Employee #06615)

Year	Gross Wages	Perdiem
1974	55,618.42	269.10
75	60,824.31	200.20
76	69,603.96	280.15
77	78,349.90	126.30
78	63,810.00	91.80

Pauline Davis

Payroll Asst.

* * * * * *

(Hand-served on Western Airlines defense counsel Darling, Hall & Rae on September 12, 1980 by Lavine law offices law clerk Linda Westbrook)